

1 JAMES PATRICK SHEA  
Nevada Bar No. 405  
2 BART K. LARSEN  
Nevada Bar No. 8538  
3 KYLE M. WYANT  
Nevada Bar No. 14652  
4 **SHEA LARSEN**  
5 1731 Village Center Circle, Suite 150  
Las Vegas, Nevada 89134  
6 Telephone: (702) 471-7432  
7 Fax: (702) 926-9683  
Email: jshea@shea.law  
8 blarsen@shea.law  
9 kwyant@shea.law

10 JENNIFER E. HOEKEL  
Nevada Bar No. 12775  
11 jennifer.hoekel@huschblackwell.com  
12 **HUSCH BLACKWELL LLP**  
8001 Forsyth Boulevard Suite 1500  
13 St. Louis, Missouri 63105  
Telephone: 314.480.1500  
14 Facsimile: 314.480.1505

15 -and-

16 PATRICK M. HARVEY  
17 *Admitted Pro Hac Vice*  
Patrick.Harvey@huschblackwell.com  
18 **HUSCH BLACKWELL LLP**  
19 511 North Broadway, Suite 1100  
Milwaukee, WI 53202  
20 Telephone: 414.273.2100  
21 Facsimile: 414.223.5000

22 *Attorneys for Plaintiff,*  
23 *James V. Deppoleto Jr.*

24 **UNITED STATES DISTRICT COURT**  
25 **FOR THE DISTRICT OF NEVADA**  
26  
27  
28

JAMES V. DEPPOLETO JR.,  
Individually and Derivatively on Behalf of  
Nominal Defendant Takeover Industries  
Incorporated

Plaintiff,

v.

TAKEOVER INDUSTRIES  
INCORPORATED,  
Defendant and Nominal Defendant

MICHAEL HOLLEY,

TOBY MCBRIDE,

JOSEPH PAVLIK,

TOM ZARRO,

and

NEXTGEN BEVERAGES, LLC

Defendants.

CASE NO. 2:22-cv-02013-GMN-MDC

**DECLARATION OF PATRICK M. HARVEY  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT  
PURSUANT TO FED. R. CIV. P. 56(a)**

Under penalty of perjury and pursuant to 28 U.S.C. § 1746, I, Patrick M. Harvey, declare  
as follows:

1. I am one of the attorneys for Plaintiff, James V. Deppoleto Jr. ("Plaintiff" or  
"Deppoleto"), in the above captioned matter, and I am admitted to practice *pro hac vice* before  
this Court. I submit this Declaration in support of Plaintiff's Motion for Partial Summary  
Judgment Pursuant to Fed. R. Civ. P. 56(a).

2. A true and correct copy of the transcript of the October 4, 2024, deposition of  
Michael Holley is attached hereto as **Exhibit 1**.

3. A true and correct copy of the transcript of the November 19 and 22, 2024,  
depositions of Michael Holley as Corporate Representative of Takeover Industries, Incorporated

1 is attached hereto as **Exhibit 2**.

2 4. A true and correct copy of the transcript of the November 15 and 22, 2024,  
3 depositions of Toby McBride is attached hereto as **Exhibit 3**.

4 5. A true and correct copy of the transcript of the August 20, 2024, deposition of Joe  
5 Pavlik is attached hereto as **Exhibit 4**.

6 6. A true and correct copy of the May 25, 2022, Convertible Note Purchase  
7 Agreement, Holley Corp. Rep. Dep. Ex. 2 is attached hereto as **Exhibit 5**.

8 7. A true and correct copy of the May 20, 2022, Joint Written Consent of the Board  
9 of Directors and Shareholders of Takeover Industries, Inc., Michael Holley Corp. Rep. Dep. Ex.  
10 4, is attached hereto as **Exhibit 6**.

11 8. A true and correct copy of the May 25, 2022, Secured Convertible Promissory  
12 Note, Michael Holley Corp. Rep. Dep. Ex. 3 is attached hereto as **Exhibit 7**.

13 9. A true and correct copy of the July 6, 2022, First Amendment to Convertible Note  
14 Purchase Agreement, Michael Holley Corp. Rep. Dep. Ex. 5 is attached hereto as **Exhibit 8**.

15 10. A true and correct copy of the July 1, 2022, Joint Written Consent of the Board of  
16 Directors and Shareholders of Takeover Industries, Inc., Michael Holley Corp. Rep. Dep. Ex. 7  
17 is attached hereto as **Exhibit 9**.

18 11. A true and correct copy of the July 6, 2022, Second Secured Convertible  
19 Promissory Note, Michael Holley Corp. Rep. Dep. Ex. 6 is attached hereto as **Exhibit 10**.

20 12. A true and correct copy of the August 19, 2022, Second Amendment to  
21 Convertible Note Purchase Agreement, Michael Holley Corp. Rep. Dep. Ex. 8 is attached hereto  
22 as **Exhibit 11**.

23 13. A true and correct copy of the August 18, 2022, Joint Written Consent of the  
24  
25  
26  
27  
28

1 Board of Directors and Shareholders of Takeover Industries, Inc, Michael Holley Corp. Rep.  
2 Dep. Ex. 10 is attached hereto as **Exhibit 12**.

3 14. A true and correct copy of the First Supplemental Loan, Michael Holley Corp.  
4 Rep. Dep. Ex. 17 is attached hereto as **Exhibit 13**.

5 15. A true and correct copy of the Second Supplemental Loan, Michael Holley Corp.  
6 Rep. Dep. Ex. 18 is attached hereto as **Exhibit 14**.

7 16. A true and correct copy of the transcript of the December 5, 2024, deposition of  
8 James Deppoleto is attached hereto as **Exhibit 15**.

9 17. A true and correct copy of the November 4, 2022, Resolution of the Board of  
10 Directors of Labor Smart, Inc., Michael Holley Corp. Rep. Dep. Ex. 12 is attached hereto as  
11 **Exhibit 16**.

12 18. A true and correct copy of the November 8, 2022, First Notice of Default,  
13 Michael Holley Corp. Rep. Dep. Ex. 14 is attached hereto as **Exhibit 17**.

14 19. A true and correct copy of the November 22, 2022, Second Notice of Default,  
15 Michael Holley Corp. Rep. Dep. Ex. 15 is attached hereto as **Exhibit 18**.

16 20. A true and correct copy of the August 19, 2022, Third Secured Convertible  
17 Promissory Note, Michael Holley Corp. Rep. Dep. Ex. 9 is attached hereto as **Exhibit 19**.

18 21. A true and correct copy of the April 17, 2023, Resolution of the Board of  
19 Directors of Takeover Industries, Inc., Michael Holley Corp. Rep. Dep. Ex. 13 is attached hereto  
20 as **Exhibit 20**.

21 22. A true and correct copy of the Bank of America Bank Statements, Tom Zarro  
22 Dep. Ex. 15, is attached hereto as **Exhibit 21**. Personal Dep. Ex. 15 at DEF00210 and 00234.

23 23. A true and correct copy of the transcript of the November 21, 2024 deposition of  
24  
25  
26  
27  
28

1 Tom Zarro is attached hereto as **Exhibit 22**.

2 24. A true and correct copy of the transcript of the November 21, 2024, deposition of  
3 Tom Zarro as Corporate Representative of Next Gen Beverages is attached hereto as **Exhibit 23**.

4 25. A true and correct copy of the December 31, 2022, Takeover Industries Inc.  
5 Balance Sheet, Tom Zarro Corp. Rep. Dep. Ex. 11 is attached hereto as **Exhibit 24**.

6 26. A true and correct copy of Great Northern Corporation invoices issued to  
7 Takeover Industries and subsequent correspondence, Bates-numbered DEF01375-01383, is  
8 attached hereto as **Exhibit 25**.

9  
10 Executed on this 10th day of January, 2025.

11  
12 /s/ Patrick M. Harvey  
13 Patrick M. Harvey  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

1  
2 1. On January 10, 2025, I served the following document(s): **DECLARATION IN**  
3 **SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY**  
4 **JUDGMENT PURSUANT TO FED. R. CIV. P. 56(a)**

5 2. I served the above document(s) by the following means to the persons as listed  
6 below:

7 ☒ a. ECF System:

8 ☐ b. United States mail, postage fully prepaid:

9 ☐ c. Personal Service:

10 I personally delivered the document(s) to the persons at these addresses:

11 ☐ For a party represented by an attorney, delivery was made by  
12 handing the document(s) at the attorney's office with a clerk or other person in  
13 charge, or if no one is in charge by leaving the document(s) in a conspicuous place  
14 in the office.

15 ☐ For a party, delivery was made by handling the document(s)  
16 to the party or by leaving the document(s) at the person's dwelling house or usual  
17 place of abode with someone of suitable age and discretion residing there.

18 ☐ d. By direct email (as opposed to through the ECF System):  
19 Based upon the written agreement of the parties to accept service by email or a  
20 court order, I caused the document(s) to be sent to the persons at the email  
21 addresses listed below. I did not receive, within a reasonable time after the  
22 transmission, any electronic message or other indication that the transmission was  
23 unsuccessful.

24 ☐ e. By fax transmission:

25 Based upon the written agreement of the parties to accept service by fax  
26 transmission or a court order, I faxed the document(s) to the persons at the fax  
27 numbers listed below. No error was reported by the fax machine that I used. A copy  
28 of the record of the fax transmission is attached.

☐ f. By messenger:

I served the document(s) by placing them in an envelope or package addressed to  
the persons at the addresses listed below and providing them to a messenger for  
service.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 10, 2025.

By: /s/ Patrick M. Harvey